

# SINHA LAW

OCT 25 2017

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October 18, 2017

Via Hand Delivery

Kevin Sorensen  
Jacob Bowles  
Crop Production Services  
14442 Walnut Grove Thornton Rd  
Walnut Grove, CA 95690

Via U.S. Mail, Certified

C T Corporation System  
Agent for Service of Process for  
Crop Production Services, Inc.  
818 West Seventh Street, Suite 930  
Los Angeles, CA 90017

**Re: 60-Day Notice of Violations and Intent to File Suit Under the Federal Water Pollution Control Act ("Clean Water Act")**

To Officers, Directors, Operators, Property Owners and/or Facility Managers of Crop Production Services, Inc.:

The California Environmental Protection Association ("CEPA") provides this 60-day Notice of violations of the Federal Clean Water Act ("CWA" or "Act") 33 U.S.C. § 1251 *et seq.*, that CEPA believes are occurring at the Crop Production Services facility located at 14442 Walnut Grove Thornton Road in Walnut Grove, California ("the Facility" or "the site"). Pursuant to CWA §505(b) (33 U.S.C. §1365(a)), this 60-Day Notice of Violations and Intent to File Suit ("Notice") is being sent to you as the responsible property owners, officers, operators or managers of the Facility, as well as to the U.S. Environmental Protection Agency ("EPA"), the U.S. Attorney General, the California State Water Resources Control Board ("SWRCB"), and the California Central Valley Regional Water Quality Control Board ("RWQCB").

CEPA is an environmental citizen's group established under the laws of the State of California to protect, enhance, and assist in the restoration of all rivers, creeks, streams, wetlands, vernal pools, and tributaries of California.

This Notice addresses the violations of the CWA and the terms of California's Statewide General Permit for Dischargers of Storm Water for Industrial Activities ("General Permit") arising from the unlawful discharge of pollutants from the Facility into the Mokelumne River Watershed and Georgiana Slough, tributaries of the Sacramento-San Joaquin River Delta. The Mokelumne River is included on the 303(d) list as impaired for copper and zinc. In addition, known toxicities of concern for the entire Sacramento-San Joaquin River Delta area include nitrogen, phosphorous and total suspended solids.

Crop Production Services (the "Discharger") is hereby placed on formal notice by CEPA that after the expiration of sixty (60) days from the date this Notice was delivered, CEPA will be entitled to bring suit in the United States District Court against the Discharger for continuing violations of an effluent standard or limitation, National Pollutant Discharge Elimination System ("NPDES") permit condition or requirement, or Federal or State Order issued under the CWA (in particular, but not limited to, § 301(a), § 402(p), and § 505(a)(1)), as well as the failure to comply with requirements set forth in the Code of Federal Regulations.

## **I. THE SPECIFIC STANDARD, LIMITATION, OR ORDER VIOLATED**

The Discharger filed a Notice of Intent ("NOI") on July 20, 2015, with respect to the Facility, agreeing to comply with the terms and conditions of the General Permit. The SWRCB approved the NOI, and the Discharger was assigned Waste Discharger Identification ("WDID") number 5S34I021915.

However, in its operations of the Facility, the Discharger has failed and is failing to comply with specific terms and conditions of the General Permit as described in Section II below. These violations are continuing in nature. Violations of the General Permit are violations of the CWA, specifically CWA § 301(a) and CWA § 402(p). Therefore, the Discharger has committed ongoing violations of the substantive and procedural requirements of CWA § 402(p) and of NPDES Permit No. CAS000001, State Water Resources Control Board Order 2014-0057-DWQ (the "General Permit") relating to industrial activities at the Facility.

## **II. VIOLATIONS OF THE CLEAN WATER ACT AND GENERAL PERMIT**

### **A. Facility Operations**

Operations at the Crop Production Services facility consist of aqua ammonia and 10-34-0 ammonium polyphosphate production; blending of dry with liquid fertilizer; sales/distribution of pre-packaged containers of dry fertilizers and liquid pesticides; and storage of fuels (diesel, kerosene, and gasoline) for fleet vehicles. Pursuant to the Facility's current Storm Water Pollution Prevention Plan, the ammonia production process is not exposed to storm water.

Facility operations are covered under Standard Industry Classification (SIC) Code 2875 – Fertilizers, Mixing Only.

Because the real property on which the Facility is located is subject to rain events, the range of pollutants discharged from the Facility and identified in this Notice discharge directly into the Mokelumne River.

B. Crop Production Services's Specific Violations

*1. Failure to File Complete Annual Reports*

Pursuant to Section XVI.A of the General Permit, all Dischargers must certify and submit via SMARTS an Annual Report no later than July 15th following each reporting year [July 1 through June 30 of each year], using the standardized format and checklists contained within the SMARTS database system.

Pursuant to Section XVI.B of the General Permit, the Annual Report must contain the following elements: (a) a Compliance Checklist that indicates whether the Discharger has complied with and addressed all applicable requirements of the General Permit; (b) an explanation for any non-compliance with requirements within the reporting year, as indicated in the Compliance Checklist; (c) an identification, including page numbers and/or sections, of all revisions made to the SWPPP within the reporting year; and (d) the date(s) of the required Annual Evaluation.

Crop Production Services' Annual Reports uploaded into the SMARTS database system for both the reporting years ending June 30, 2015, and June 30, 2016, were essentially nothing more than cover pages and were missing all the above elements.

*2. Deficient BMP Implementation*

Sections I.C, V.A and X.C.1.b of the General Permit require Dischargers to identify and implement minimum and advanced Best Management Practices ("BMPs") that comply with the Best Available Technology ("BAT") and Best Conventional Pollutant Control Technology ("BCT") requirements of the General Permit to reduce or prevent discharges of pollutants in their storm water discharge in a manner that reflects best industry practice considering technological availability and economic practicability and achievability.

On July 1, 2016, the Discharger was accelerated to Level 1 Status pursuant to Section XII.C of the General Permit, for exceedances of Total Suspended Solids ("TSS"), iron, pH, nitrates, phosphorous, and zinc. Pursuant to the General Permit, the facility was evaluated on September 9, 2016, and a Level 1 Exceedance Response Evaluation Report was completed and certified on December 29, 2016.

The September 2016 evaluation completed by Andrew Ellsmore of Rubik Environmental noted the following deficiencies in BMP implementation at the site:

1. There were areas of exposed soil and gravel throughout the site;
2. The Truck Scale was not being cleaned properly;
3. Effluent generated to the rinse tank was not being contained or removed;
4. Storm drains were not being contained properly; and
5. BMPs were not being implemented in the material handling areas, resulting in high exceedances of nitrates, phosphorous, iron and zinc.

3. *Discharges in Violation of the General Permit*

Section 402(p) of the Clean Water Act prohibits the discharge of storm water associated with industrial activities, except as permitted under an NPDES permit such as the General Permit. 33 U.S.C. § 1342. Sections I.C.27 and III.A and B of the General Permit prohibit the discharge of materials other than storm water (defined as non-storm water discharges) that discharge either directly or indirectly to waters of the United States. Section XXI.A of the General Permit requires Dischargers to comply with effluent standards or prohibitions established under section CWA 307(a) for toxic pollutants within the time provided in the regulations that establish these standards or prohibitions.

Sections III and VI of the General Permit prohibit storm water discharges and authorized non-storm water discharges to surface or groundwater that adversely impact human health or the environment; cause or threaten to cause pollution, contamination, or nuisance; cause or contribute to an exceedance of any applicable water quality standards in any affected receiving water; violate any discharge prohibitions contained in applicable Regional Water Board Water Quality Control Plans (Basin Plans) or statewide water quality control plans and policies; or contain hazardous substances equal to or in excess of a reportable quantity listed in 40 Code of Federal Regulations sections 110.6, 117.21, or 302.6.

The Discharger's sampling and analysis results reported to the RWQCB confirm discharges of specific pollutants and materials other than storm water, in violation of the Permit provisions listed above. Self-monitoring reports under the Permit are deemed "conclusive evidence of an exceedance of a permit limitation." *Sierra Club v. Union Oil*, 813 F.2d 1480, 1492 (9th Cir. 1988).

Table 2 of the General Permit (TABLE 2: *Parameter NAL Values, Test Methods, and Reporting Units*) outlines specific Annual and Instantaneous Numeric Action Levels ("NAL") for common parameters. A copy of Table 2 is included with this Notice.

The following discharges of pollutants from the Facility have violated Discharge Prohibitions and Receiving Water Limitations of the General Permit and are evidence of ongoing violations of Effluent Limitations:

Date	Discharge Point	Parameter	Concentration in Discharge	NAL Annual & Instantaneous Value
11/20/14	SE Main outfall	Nitrate + Nitrite	18.3 mg/L	.68 mg/L
11/20/14	***	Iron	36 mg/L	1.0 mg/L
11/20/14	***	Zinc	.91 mg/L	.26 mg/L
11/20/14	***	TSS	690 mg/L	100/400 mg/L
11/20/14	***	Phosphorous	6.9 mg/L	2.0 mg/L
4/7/15	***	Nitrate + Nitrite	21.6 mg/L	.68 mg/L
4/7/15	***	Iron	130 mg/L	1.0 mg/L
4/7/15	***	Zinc	1.2 mg/L	.26 mg/L
4/7/15	***	Phosphorous	20 mg/L	2.0 mg/L
4/7/15	***	TSS	1100 mg/L	100/400 mg/L
11/2/15	***	pH	5	6-9
11/2/15	***	Nitrate + Nitrite	22 mg/L	.68 mg/L
11/2/15	***	Iron	21 mg/L	1.0 mg/L
11/2/15	***	Phosphorous	20 mg/L	2.0 mg/L
11/2/15	***	TSS	540 mg/L	100/400 mg/L
11/9/15	***	Nitrate + Nitrite	5.7 mg/L	.68 mg/L
11/9/15	***	Iron	35 mg/L	1.0 mg/L
11/9/15	***	Phosphorous	7.5 mg/L	2.0 mg/L
11/9/15	***	TSS	470 mg/L	100/400 mg/L
1/14/16	***	pH	5	6-9
1/14/16	***	Nitrate + Nitrite	11 mg/L	.68 mg/L
1/14/16	***	Iron	16 mg/L	1.0 mg/L
1/14/16	***	Phosphorous	4.4 mg/L	2.0 mg/L
1/14/16	***	TSS	240 mg/L	100/400 mg/L
3/7/16	***	Nitrate + Nitrite	2.3 mg/L	.68 mg/L
3/7/16	***	Iron	22 mg/L	1.0 mg/L
3/7/16	***	TSS	370 mg/L	100/400 mg/L
10/14/16	***	Nitrate + Nitrite	40 mg/L	.68 mg/L
10/14/16	***	Iron	7.9 mg/L	1.0 mg/L
10/14/16	***	Phosphorous	5.5 mg/L	2.0 mg/L
10/14/16	***	TSS	220 mg/L	100/400 mg/L

Date	Discharge Point	Parameter	Concentration in Discharge	NAL Annual & Instantaneous Value
12/15/16	Front by Road	Nitrate + Nitrite	2.7 mg/L	.68 mg/L
12/15/16	Front by Road	Iron	38 mg/L	1.0 mg/L
12/15/16	Front by Road	Zinc	.36 mg/L	.26 mg/L
12/15/16	Front by Road	Phosphorous	2.6 mg/L	2.0 mg/L
12/15/16	Front by Road	TSS	240 mg/L	100/400 mg/L
12/15/16	SE Main Outfall	Nitrate + Nitrite	8.1 mg/L	.68 mg/L
12/15/16	SE Main Outfall	Iron	19 mg/L	1.0 mg/L
12/15/16	SE Main Outfall	Zinc	.64 mg/L	.26 mg/L
12/15/16	SE Main Outfall	Phosphorous	3.7 mg/L	2.0 mg/L
12/15/16	SE Main Outfall	TSS	260 mg/L	100/400 mg/L
1/10/17	Front by Road	Nitrate + Nitrite	2.5 mg/L	.68 mg/L
1/10/17	Front by Road	Iron	47 mg/L	1.0 mg/L
1/10/17	Front by Road	Zinc	.64 mg/L	.26 mg/L
1/10/17	Front by Road	Phosphorous	9.8 mg/L	2.0 mg/L
1/10/17	Front by Road	TSS	750 mg/L	100/400 mg/L
1/10/17	SE Main Outfall	Nitrate + Nitrite	3.8 mg/L	.68 mg/L
1/10/17	SE Main Outfall	Iron	11 mg/L	1.0 mg/L
3/21/17	Front by Road	Nitrate + Nitrite	6.2 mg/L	.68 mg/L
3/21/17	Front by Road	Iron	84 mg/L	1.0 mg/L
3/21/17	Front by Road	Zinc	1.3 mg/L	.26 mg/L
3/21/17	Front by Road	Phosphorous	6.4 mg/L	2.0 mg/L
3/21/17	Front by Road	TSS	1700 mg/L	100/400 mg/L
3/21/17	SE Main Outfall	Nitrate + Nitrite	1.8 mg/L	.68 mg/L
3/21/17	SE Main Outfall	Iron	22 mg/L	1.0 mg/L
3/21/17	SE Main Outfall	Zinc	.69 mg/L	.26 mg/L
3/21/17	SE Main Outfall	Phosphorous	2.4 mg/L	2.0 mg/L
3/21/17	SE Main Outfall	TSS	600 mg/L	100/400 mg/L

Based on the test results summarized above, the Discharger has both an annual average and an instantaneous numerical action limit (NAL) exceedance for the Fiscal Year ending June 30, 2017, for Total Suspended Solids; and an annual average exceedance for nitrates, iron, phosphorous and zinc for that same time period. These results elevated the Discharger to Level 2 Status on July 1, 2017, pursuant to Section XII.C of the General Permit – Exceedance Response Actions.



The Discharger may have had other violations that can only be fully identified and documented once discovery and investigation have been completed. Hence, to the extent possible, CEPA includes such violations in this Notice and reserves the right to amend this Notice, if necessary, to include such further violations in future legal proceedings.

The violations discussed herein are derived from eye witness reports and records publicly available. These violations are continuing.

The Facility discharges to the Upper Mokelumne River, which is a tributary of the Sacramento-San Joaquin River Delta, both waters of the United States. All illegal discharges and activities described in this Notice occurred in close proximity to the above-identified waters. During storm events, discharges from the Facility are highly likely to discharge to said waters.

The RWQCB has determined that the watershed areas and affected waterways identified in this Notice are beneficially used for: water contact recreation, non-contact water recreation, fish and wildlife habitat, preservation of rare and endangered species, fish migration, fish spawning, navigation, and sport fishing. Information available to CEPA indicates the continuation of unlawful discharges of pollutants from the Facility into waters of the United States, in violation of the General Permit and the CWA. CEPA is informed and believes, and on such information and belief alleges, that these illegal discharges will continue to harm beneficial uses of the above-identified waters until the Discharger corrects the violations outlined in this Notice.

### **III. THE PERSON OR PERSONS RESPONSIBLE FOR THE VIOLATIONS**

The entity responsible for the alleged violations is Crop Production Services ("the Discharger"), and its employees responsible for compliance with the CWA.

### **IV. THE LOCATION OF THE VIOLATIONS**

The location of the point sources from which the pollutants identified in this Notice are discharged in violation of the CWA is Crop Production Services' permanent facility address of 14442 Walnut Grove Thornton Road, in Walnut Grove, California, and includes the adjoining navigable waters of the Mokelumne River and the Sacramento-San Joaquin River Delta, respectively - both waters of the United States.

**V. THE DATE, DATES, OR REASONABLE RANGE OF DATES OF THE VIOLATIONS**

The range of dates covered by this 60-day Notice is from at least November 20, 2014, to the date of this Notice. CEPA may from time to time update this Notice to include all violations which may occur after the range of dates covered by this Notice. Some of the violations are continuous in nature; therefore, each day constitutes a violation.

**VI. CONTACT INFORMATION**

The entity giving this 60-day Notice is the California Environmental Protection Association ("CEPA").

To ensure proper response to this Notice, all communications should be addressed as follows:

*Xhavin Sinha, Attorney for*  
*CALIFORNIA ENVIRONMENTAL PROTECTION ASSOCIATION*  
*1645 Willow Street, #150*  
*San Jose, CA 95125*  
*Telephone: (408) 791-0432*  
*Email: [xsinha@sinha-law.com](mailto:xsinha@sinha-law.com)*

**VII. PENALTIES**

The violations set forth in this Notice affect the health and enjoyment of members of CEPA who reside near and recreate in the Sacramento-San Joaquin River Delta area. Members of CEPA use the Sacramento River for recreation, sports, fishing, swimming, boating, hiking, photography, nature walks and the like. Their health, use and enjoyment of this natural resource is specifically impaired by the Discharger's violations of the CWA as set forth in this Notice.

CWA §§ 505(a)(1) and 505(f) provide for citizen enforcement actions against any "person," including individuals, corporations, or partnerships, for violations of NPDES permit requirements and for un-permitted discharges of pollutants. 33 U.S.C. §§ 1365(a)(1) and (f), §1362(5). An action for injunctive relief under the CWA is authorized by 33 U.S.C. §1365(a). Violators of the Act are also subject to an assessment of civil penalties of up to \$37,500 per day/per violation for all violations pursuant to Sections 309(d) and 505 of the Act, 33 U.S.C. §§ 1319(d), 1365. See also 40 C.F.R. §§ 19.1-19.4.

CEPA believes this Notice sufficiently states grounds for filing suit in federal court under the "citizen suit" provisions of CWA to obtain the relief provided for under the law.

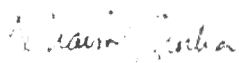


### **VIII. CONCLUSION**

The CWA specifically provides a 60-day notice period to promote resolution of disputes. CEPA encourages the Discharger and/or its counsel to contact CEPA or its counsel within 20 days of receipt of this Notice to initiate a discussion regarding the violations detailed herein.

During the 60-day notice period, CEPA is willing to discuss effective remedies for the violations, however, if the Discharger wishes to pursue such discussions in the absence of litigation, it is suggested those discussions be initiated soon so that they may be completed before the end of the 60-day notice period. CEPA reserves the right to file a lawsuit if discussions are continuing when the notice period ends.

Very truly yours,



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Khavin Sinha  
Attorney for CALIFORNIA ENVIRONMENTAL PROTECTION ASSOCIATION

Attachments:

Table 2 of the General Permit - *Parameter NAL Values, Test Methods, and Reporting Units*

**SINHA**  
**LAW**

60-Day Notice of Intent to Sue  
October 18, 2017  
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Copies to:

Administrator  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460

Executive Director  
State Water Resources Control Board  
P.O. Box 100  
Roseville, CA 95812-0100

Jeff Sessions, U.S. Attorney General  
U.S. Department of Justice  
950 Pennsylvania Avenue, N.W.  
Washington, DC 20530-0001

Regional Administrator  
U.S. EPA – Region 9  
75 Hawthorne Street  
San Francisco, CA. 94105

Executive Officer  
Central Valley Regional Water Quality Control Board  
11020 Sun Center Drive #200  
Rancho Cordova, CA 95670

**TABLE 2: Parameter NAL Values, Test Methods, and Reporting Units**

PARAMETER	TEST METHOD	REPORTING UNITS	ANNUAL NAL	INSTANTANEOUS MAXIMUM NAL
pH*	See Section XI.C.2	pH units	N/A	Less than 6.0 Greater than 9.0
Suspended Solids (TSS)*, Total	SM 2540-D	mg/L	100	400
Oil & Grease (O&G)*, Total	EPA 1664A	mg/L	15	25
Zinc, Total (H)	EPA 200.8	mg/L	0.26**	
Copper, Total (H)	EPA 200.8	mg/L	0.0332**	
Cyanide, Total	SM 4500-CN C, D, or E	mg/L	0.022	
Lead, Total (H)	EPA 200.8	mg/L	0.262**	
Chemical Oxygen Demand (COD)	SM 5220C	mg/L	120	
Aluminum, Total	EPA 200.8	mg/L	0.75	
Iron, Total	EPA 200.7	mg/L	1.0	
Nitrate + Nitrite Nitrogen	SM 4500-NO3- E	mg/L as N	0.68	
Total Phosphorus	SM 4500-P B+E	mg/L as P	2.0	
Ammonia (as N)	SM 4500-NH3 B+ C or E	mg/L	2.14	
Magnesium, total	EPA 200.7	mg/L	0.064	
Arsenic, Total (c)	EPA 200.8	mg/L	0.15	
Cadmium, Total (H)	EPA 200.8	mg/L	0.0053**	
Nickel, Total (H)	EPA 200.8	mg/l	1.02**	
Mercury, Total	EPA 245.1	mg/L	0.0014	
Selenium, Total	EPA 200.8	mg/L	0.005	
Silver, Total (H)	EPA 200.8	mg/L	0.0183**	
Biochemical Oxygen Demand (BOD)	SM 5210B	mg/L	30	

SM – Standard Methods for the Examination of Water and Wastewater, 18<sup>th</sup> edition

EPA – U.S. EPA test methods

(H) – Hardness dependent

\* Minimum parameters required by this General Permit

\*\*The NAL is the highest value used by U.S. EPA based on their hardness table in the 2008 MSGP.